

April 17, 2010

Honorable Gregory Jaczko, Chairman
Nuclear Regulatory Commission (NRC)
Washington, DC 20555-0001

Re: Your (as your predecessors since 1979) non-compliance with your positive statutory duty to “prevent prohibited personnel practices (PPP’s)” in Nuclear Regulatory Commission (NRC)

Dear Chairman Jaczko,

As you know, I am a deeply concerned licenced professional engineer (PE) and 30+ year member of the nuclear profession. I played an important, possibly essential, role in the American Nuclear Society (ANS), the world’s largest nuclear professional society, issuing a new code of ethics about 5 years ago. I played a role in its issuing a policy advocating PE licensure of its members. I doubt any other federal employee, in the history of the federal civil service from its creation by the Pendleton Act of 1883, has “prevailed” in more whistleblower-related litigation. I have twice submitted the winning essay for the annual National Society of Professional Engineers (NSPE) engineering ethics contest.

My efforts to expose and correct unsafe safety conditions and practices in the Department of Energy (DOE), including its repressive workplace environment, played a role in the passage of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000. About 50,000 diseased, disabled or prematurely deceased DOE workers (or their survivors) have received about 3 billion dollars by this law.

I have been in regular contact with your office in the past year about my concerns and contentions about your inability/failure to comply with one of your most vital duties to NRC employees - to ensure they can do their duties, ethically and competently per the “merit system principles,” while being adequately protected from reprisal and other types of “prohibited personnel practices (PPP’s), per 5 U.S.C. §2302(c).

Instead of taking my concerns seriously, you apparently blew me off, based on the condescending letters I received from Mark Maxim, the NRC’s Acting Assistant General Counsel for Administration. When I tried to obtain relevant NRC records via FOIA, starting in November of last year, the NRC FOIA office threw up roadblocks and did not follow NRC regulations in claiming I would have to pay \$500 for such information.

So last month, I offered to pay \$500 for the information - unlike for Mr. Maxim, “put up or shut up” are more than empty words to me, when professional duty for nuclear safety is involved. The result is just as I thought - NRC has no records demonstrating your compliance with your vital duty to ensure NRC employees are adequately protected from PPP’s.

Will you listen me now Mr. Jaczko? As a PE, I have a positive legal duty to be “completely objective and truthful in all professional reports, statements or testimony,” per chapter 0120-02-.04(1) of the TN State Board of Architectural and Engineering Examiners.

Please, Chairman Jaczko, for the safety of America, let alone the safety of the nuclear facilities NRC regulates, hold me to that standard about my claims that the U.S. Office of Special Counsel (OSC) <www.osc.gov>. I openly and publicly claim that OSC, the federal law enforcement agency created by the Civil Service Reform Act of 1978 for the purpose of protecting federal employees from PPP's, is a fraud and, arguably, given the harm that has resulted from its lawbreaking to America, a “domestic enemy” - something I took an oath to protect America from when in becoming a federal employee.

A federal law enforcement agency that renounces any tangible nondiscretionary duty to enforce the laws under its jurisdiction, as OSC did 31 years ago, is a fraud. A federal law enforcement agency that claims, contrary to the determinations of a Federal Appeals Court, that its negative jurisdictional determinations are beyond Court review, is a fraud.

Because OSC is a fraud, you are unable to comply with your vital duty to “prevent PPP's” in NRC - how can you prevent PPP's when OSC keeps you (as everyone else) “in the dark” about its determinations (presuming it even makes them) whether there are reasonable cause/grounds to believe the PPP's alleged to it by NRC employees occurred? The same is true for every other agency head.

My claims of OSC's being a fraud center on its 31 year-long claim that the reporting requirements of 5 U.S.C. §1214(e) do not apply to its determinations about PPP's or other violations within its enforcement jurisdiction. As a result, OSC claims to have only discretionary duties, in any tangible sense, for enforcing the laws under its jurisdiction.

You have the power to have this issue of law resolved. By 28 C.F.R. §0.25, you can request the Office of Legal Counsel of the Department of Justice to issue an opinion, on behalf of the Executive Branch, on §1214(e) and whether it encompasses PPP's and other violations within OSC's jurisdiction.

You can do the same for 5 U.S.C. §1204(a)(3), by which the U.S. Merit Systems Protection Board (MSPB) is required to conduct “special studies” of OSC's interpretation of and compliance with its non-discretionary duties to protect federal employees from PPP's and agency head's interpretation of and compliance with their duties to “prevent PPP's.” I publicly and openly state that MSPB renounced this nondiscretionary statutory duty, at its creation 31 years ago, thereby enabling 31 years of fraud at OSC.

This combination of 31 years of OSC/MSPB lawbreaking precludes your compliance with §2302(c) - you are responsible to ensure NRC employees are adequately protected from PPP's - an impossibility because of OSC's fraudulent nature. It has also left America much diminished

and more threatened.

I do not intend to go away, Chairman Jaczko. I am still married, still employed, still hold a high security clearance, and, by dint of many years of “suffering for righteousness’ sake” in upholding and defending my profession of engineering, its code of ethics, and the public health and safety (together with the “merit system principles”), I am now an influential member of mankind’s largest and most global profession of engineering, whose 20 million degreed members worldwide collectively hold civilization and much of the natural environment in their hands.

While “ignorance of the law is no excuse” regarding your non-compliance with your duty to ensure NRC employees are adequately protected from PPP’s, now you can no longer claim ignorance. You have a duty, by your oath as a federal employee, just as I and others. If you were a PE, and if you now failed to take necessary action to substantiate or dispel my concerns, then I would likely have grounds to file a professional misconduct complaint against you.

Thank you for your attention to this matter. I have nothing, absolutely nothing, to hide about my actions and motives.

Respectfully,

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Attachments:

- My whistleblower appeal, docketed on April 6, 2010, to U.S. Supreme Court
- My FOIA request, NRC’s response, and my FOIA appeal for no. 2010-0181
- Federal employee union letter in support of my Supreme Court case
- excerpts of relevant law

copy: Other stakeholder to a trustworthy federal civil service and nuclear safety